

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AT&T MOBILITY LLC,

Plaintiff,

vs.

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS

Defendant.

Civil Action File No.
1:09-CV-3057-TCB

DECLARATION OF JOSEPH SARACINO

I, Joseph Saracino, under penalty of perjury, declare as follows:

PERSONAL BACKGROUND

1. I am a Vice President of Marketing at Verizon Wireless (“Verizon”).

I have been employed by Verizon since 1995 and have held my current position since January 2007. In my capacity as Vice President of Marketing, I report to Executive Vice President and Chief Marketing Officer John Stratton. Prior to my current position, I held a series of marketing positions at Verizon, including Vice President of E-Commerce and Area Vice President for Marketing and Sales Operations in Alpharetta, Georgia.

2. One of my primary responsibilities at Verizon is oversight of consumer and business advertising campaigns, including campaigns specifically promoting Verizon's 3G network. Verizon advertising campaigns are implemented through various media, including television, radio, print, Internet, and direct mail. In addition to these responsibilities, I also oversee brand management, identity standards and naming, traditional/digital media planning and buying and distribution channel visual merchandising.

3. In my role as Vice President of Marketing, I monitor the advertising and marketing efforts of Verizon's competitors, including AT&T, by using various third-party ad-clipping and media-monitoring services to procure information on competitors' advertising spending levels and messaging priorities (to determine, among other things, which demographics competitors intend to reach with certain advertisements).

DEFINITION AND MARKETING OF 3G

4. 3rd Generation, or 3G, is a standard of mobile telephony technology that supports increased bandwidth and more diverse applications, which are often executed on a BlackBerry, iPhone, or other type of "smartphone." 3G is superior to its predecessor technologies such as 2G and 2.5G, which have been used for and associated with voice services and slower, less robust transmission of data. 3G

networks allow consumers to do much more with their mobile phones, including more efficiently: (i) sending and receiving emails; (ii) Internet browsing; (iii) transmitting large data files such as photographs; (iv) videos; (v) documents; (vi) music; and (vii) using location-based applications that interface with global positioning satellites (GPS).

5. Smartphones that run Internet applications and other media-rich programs require far greater bandwidth to perform optimally, making 3G appealing for those consumers who desire better performance from their smartphones. As the demand for smartphones has increased exponentially, so has the demand for 3G wireless services.

6. I believe that AT&T will not dispute my characterization of the importance of 3G service to smartphone users. On July 1, 2009, AT&T initiated an advertising challenge against Verizon at the National Advertising Division of the Council of Better Business Bureaus. The following is an excerpt from the challenge letter submitted by AT&T's counsel in connection with that proceeding:

By increasing the speed of data transmission, 3G Networks offer increased bandwidth, which significantly improves customers' experience when downloading and uploading data to and from their wireless devices. Thus, the primary advantage of 3G Networks over earlier generations of wireless network technology is the enhanced data speed 3G Networks provide. This enhanced speed makes downloading data from the Internet like pictures, music, videos, and

other multimedia on wireless devices a more satisfying consumer experience.

(Exhibit 5, emphasis added.)

7. In 2007, when AT&T launched the first iPhone using its non-3G coverage network, there were many media reports that consumers were unhappy with the iPhone's performance using that non-3G AT&T network. Attached as Exhibit 6 are examples of such articles.

8. Based on my marketing experience and consumer research I have seen, I understand that prospective purchasers of smartphones are generally of a younger demographic, more technology savvy, and heavier users of data services than purchasers of traditional cellular phones; so these consumers place great importance on the availability of 3G coverage.

9. As a result of the increased demand for smartphones, virtually all of the major wireless carriers have made their 3G capacity a key focus of their recent advertising efforts. To my recollection, over the prior year, none of the 4 national wireless carriers -- Verizon, AT&T, T-Mobile, and Sprint -- have advertised 1G, 2G, or 2.5G as adequate substitutes for 3G. As the focus on 3G has developed, each of the 4 major carriers instead have looked for ways to promote their 3G capacity.

10. Customer movement from one carrier to another is a common occurrence in the wireless industry, for a variety of reasons. To the extent possible, this movement is closely tracked and monitored by Verizon and its competitors.

AT&T's "NATION'S FASTEST 3G NETWORK" CAMPAIGN

11. In July 2008, AT&T launched a major campaign in which it advertised that it has the "Nation's Fastest 3G Network." In a July 10, 2008 press release, AT&T announced: "For customers who want access to blazing-fast wireless broadband service, there's one clear choice among all U.S. carriers. AT&T Inc. . . . today announced it offers the nation's fastest third-generation (3G) network . . ." (Exhibit 7.)

12. Since then, AT&T has run advertising touting its claim as the "Nation's Fastest 3G Network" in print, television, radio, direct mail and Internet campaigns. It is my estimate, based on publicly available information with respect to AT&T's advertising spending trends, that AT&T has spent at least \$200 million to promote its "Nation's Fastest 3G Network" claim.

13. In my observation, AT&T is promoting its 3G network separately and distinctly from its other types of voice/data coverage (e.g., its 2.5G, EDGE network). As examples, attached as Exhibit 8 are photoboards of television commercials that AT&T has run as part of its "Nation's Fastest 3G Network"

campaign, some featuring the television personality Bill Kurtis. These commercials convey to consumers interested in 3G service the message that AT&T's 3G network is available all over the country, including in very remote areas. Attached as Exhibit 9 are photoboards of other examples of television commercials in AT&T's "Nation's Fastest 3G Network" campaign -- all of which emphasize the speed of AT&T's 3G network.

14. AT&T also boasts about the ability of its infrastructure to support the "Nation's Fastest 3G Network." In a May 2009 press release, Ralph de la Vega, President and CEO, AT&T Mobility and Consumer Markets, announced that "AT&T's network infrastructure gives us a tremendous advantage With the array of smartphones, laptops and emerging devices taking advantage of AT&T's 3G network today, we know that customers are excited to experience higher mobile broadband speeds, and we are deploying the right technologies at the right times to help them get the most from that experience." (Exhibit 10, emphasis added.)

**AT&T'S FAILURE TO READILY MAKE AVAILABLE INFORMATION
RELATING TO THE LIMITS OF ITS 3G COVERAGE**

15. Attached as Exhibit 11 is a map issued by American Roamer, the leading independent wireless network coverage research company and commercial coverage map vendor. American Roamer maps accurately depict the coverage of

AT&T's 3G network based on publicly-available data it gathers. As is evident from Exhibit 11, there are large geographic areas of the United States where AT&T does not provide any 3G coverage. (As new American Roamer data becomes available, Verizon promptly incorporates the new data into the coverage maps we use in advertising and our website.)

16. AT&T's television commercials, print ads, and other forms of advertising do not inform consumers of the limited scope of its 3G coverage. For example, the television commercials only state, in a superscript (or "super," i.e., additional information in smaller type size) that "3G not available everywhere." (Exhibits 8, 9.)

17. Similarly, in AT&T's brochure advertising the "iPhone 3GS", AT&T provides potential customers with a map detailing non-3G voice and data coverage, rather than the 3G coverage it is selling. ("AT&T Plans for Apple iPhone: On the nation's fastest 3G network" brochure, attached as Exhibit 12.)

18. In addition, it is extremely difficult for a consumer to find a national 3G coverage map on the AT&T wireless website (www.wireless.att.com). While it is relatively easy to find coverage maps for "voice," "data," and other services on the website, if consumers want to learn about the extent of AT&T's 3G coverage, AT&T directs them not to a nationwide map, but to a list of metropolitan areas.

19. In recent months, several Verizon colleagues and I visited AT&T retail stores and requested maps of AT&T's 3G service areas. Each time store employees directed us to maps identifying AT&T's non-3G coverage areas.

THE VERIZON COMMERCIALS AT ISSUE ARE TRUTHFUL

20. It is my understanding that AT&T has challenged 5 of Verizon's television commercials -- "College," "Bench," "Blue Christmas," "Misfits," and "Naughty/Nice" -- as well as recent direct mail, print, and Internet advertisements. The first advertisement in this campaign launched on October 5, 2009. I have been involved in the development of all of these commercials.

Core Message In The Campaign

21. While the creative execution and context of each of these 5 television commercials is different, they all deliver the same fundamental message: that the geographic scope of Verizon's 3G network is 5 times greater than that of AT&T's 3G network. This message is also central to Verizon's direct mail, print, and Internet campaign.

22. This core message is principally delivered by the use of 2 nationwide 3G coverage maps: one showing Verizon's 3G geographic coverage areas in red (the "Red Verizon 3G Map") and one showing AT&T's 3G geographic coverage areas in blue (the "Blue AT&T 3G Map"). Directly below each of the maps there

is accompanying text that reads “Verizon Wireless 3G Coverage” and “AT&T 3G Coverage,” respectively. As explained above, these maps are issued by American Roamer, the leading independent wireless network coverage research company.

These maps accurately depict the coverage of AT&T's 3G network based on publicly-available data gathered by American Roamer.

23. These maps illustrate that Verizon has approximately 5 times more 3G coverage than does AT&T. I understand that AT&T has acknowledged that the “5 times more 3G coverage” claim is truthful. Use of 3G maps makes it clear that the 5 times claim is based on area, not population.

24. Attached as Exhibit 13 are copies of print ads from the campaign which ran in October, 2009 on a regional basis (northeast, midwest, west, and south, as labeled on the ads). That these print ads with the 3G coverage map-to-map comparison delivers the core message of the campaign is clear from an inspection of the ads.

25. It is my understanding that AT&T argues that the white space on the maps identifying where AT&T does not offer 3G coverage implies to consumers that AT&T does not offer any coverage whatsoever (i.e., voice or slower data coverage) in those areas. This does not make sense to me, because each map is accompanied by clear, explanatory text. The print ads, for example (Exhibit 13),

have a prominent large headline that states “WANT 5 TIMES MORE 3G COVERAGE THAN AT&T?” Similar language appears in all 5 television commercials challenged by AT&T, as discussed below.

26. AT&T’s argument completely ignores its own customer base, which is more than 80 million customers. Some of those no doubt live in non-3G areas, and others travel to non-3G areas. There is no reason to believe that these AT&T customers do not know that AT&T has connectivity beyond AT&T’s 3G coverage area.

27. I also note that on the Verizon 3G coverage maps, white spaces also appear over areas where a Verizon customer can make and receive phone calls, as well as send and receive data at non-3G speed, so the 2 maps convey comparable information.

“College” Television Commercial

28. On October 5, 2009, Verizon first launched “College” (Exhibit 14)¹, a thirty-second television commercial wherein a Verizon subscriber strolls a suburban college campus using his Verizon smartphone to watch streaming video and download games at 3G speed while a Red Verizon 3G Map is superimposed

¹ The “College” television commercial to which I refer is the version as modified on October 13, 2009, as addressed in the Declaration of Jerome Karnick.

above him. As these images are shown, a voiceover states: “If you wanna know why your 3G coverage works so well on Verizon Wireless, there’s a map for that. Or why you can watch videos at 3G speed, almost anywhere, there’s a map for that.” In contrast, an AT&T subscriber is shown with his arms outstretched, looking at the screen of his smartphone and shaking it, apparently frustrated in his efforts to run an Internet-enabled application. Not once is the AT&T subscriber shown holding the device to his ear. As this scene plays out, the Blue AT&T Map appears superimposed above him. The voiceover accompanying this image says: “And if you want to know why some people have spotty 3G coverage, there’s a map for that too.” The “College” commercial is no longer running.

29. Contrary to AT&T’s contention, shaking a smartphone does not convey that there is no coverage whatsoever, but rather the frustration exhibited by an experienced smartphone user because a data application is running slowly or videos are not loading quickly on his smartphone, both attributable to not accessing 3G coverage. This is analogous to experienced computer users, sitting in front of their desktop computers, tapping their fingers or looking frustrated while waiting for a file to download, or a website to open.

30. Recall AT&T’s position that 3G networks “significantly improve[] customers’ experience . . .,” and give smartphone users “a more satisfying

experience.” (Exhibit 5.) In the May 2009 press release, AT&T stated that it knew smartphone “customers are excited to experience higher mobile speeds” on 3G networks. (Exhibit 10.) The converse of a more satisfying experience, or excitement, is an unhappy smartphone user who anticipated having 3G coverage, but finds that he or she does not.

31. AT&T’s argument that the “College” commercial gives a message of no coverage also simply ignores the “spotty 3G coverage” voiceover. I understand that AT&T has not specifically challenged the truth of the phrase “spotty 3G coverage.”

32. While AT&T challenges Verizon’s right to sponsor 3G-specific comparative advertising, AT&T has engaged in massive (as much as \$200 million in advertising dollars) 3G-specific advertising, for approximately seventeen months, with its “Nation’s Fastest 3G Network” campaign. (Exhibits 8, 9.) In this marketing context, Verizon’s ads are simply making an apples-to-apples comparison of the 2 companies’ respective 3G coverage, which, in a 30-second commercial, can best be communicated with our accurate 3G coverage maps.

“Bench” Television Commercial

33. The “Bench” commercial was launched on October 7, 2009, and revised version (to which I refer below) started on October 12. (Exhibit 15,

revised commercial.) With a non-urban setting in the background, a Verizon subscriber uses her Verizon smartphone to access social networking websites and to send messages (at 3G speed) to arrange a meeting with friends, with the Red Verizon 3G Map superimposed above her. Simultaneously, a voiceover states: “If you wanna know why your 3G coverage works so well on Verizon Wireless, there’s a map for that. Or why you can make plans on the go at 3G speed, there’s a map for that.” In contrast, an AT&T subscriber is sitting alone on a bench, wearing an unhappy expression, looking down at her smartphone, with the Blue AT&T 3G Map floating above her. The AT&T subscriber is never shown holding the device to her ear. The voiceover accompanying this image says: “And if you want to know why your friend’s 3G coverage is so spotty, there’s a map for that too.” The “Bench” commercial is no longer running.

34. It is my understanding that, in its Amended Complaint, AT&T alleges that the “Bench” commercial states that “with Verizon’s ‘3G’ coverage, you can make ‘plans on the go.’” Am. Compl. ¶ 51. This quote is incomplete and inaccurate. The actual quote is as follows: “If you wanna know why your 3G coverage works so well on Verizon Wireless, there’s a map for that. Or why you can make plans on the go at 3G speed, there’s a map for that.” (Exhibit 15, emphasis added.)

35. AT&T attributes the subscriber's unhappy expression to her complete inability to use her wireless device to communicate with her friends. (Am. Compl. ¶ 53.) For the reasons explained above with respect to College, with the addition of the "spotty 3G coverage" voiceover, the unhappy expression gives emphasis to the spotty 3G coverage claim. As with College, AT&T's position is predicated on simply ignoring the "spotty coverage" voiceover. While I understand that AT&T continues to point to the "out of touch" line, that was removed from Bench a month ago.

VERIZON'S 3G MAP HOLIDAY-THEMED ADS

36. On November 8, 2009, Verizon began running 3 holiday-themed television commercials (as is standard practice at this time of the year) as part of its 3G coverage map campaign. Each of these was designed to, and does, convey the same core message as College and Bench -- that Verizon offers approximately 5 times more 3G coverage than does AT&T. As with the prior advertisements, the 3 holiday commercials feature the 2 3G coverage maps that clearly deliver the intended consumer message.

"Blue Christmas" Television Commercial

37. In "Blue Christmas" (Exhibit 16), a business traveler is shown in transit -- arriving at a motel, waiting in a train station, and then riding in a taxi. He

is holding his smartphone in front of him, shaking it, and frowning at the screen in dismay, showing frustration with the device's inability to browse Internet sites or download other data at 3G speed. Notably, he is holding the phone horizontally, so that the screen is in landscape mode, indicating that he is trying to view something on the phone's screen. Not once is he shown holding the device to his ear. In each scene, the Blue AT&T 3G Map appears above his head. Playing in the background is Elvis Presley, singing "Blue Christmas." When the business traveler arrives home, he hugs his son and then notices a red gift box on the table, with the Red Verizon 3G Map above it, prompting the man to smile -- as the announcer says "Want 3G browsing in more places? There's a map for that." As the spot closes, the announcer says "With 5 times more 3G coverage than AT&T, Verizon Wireless is your destination for great gifts."

38. I understand that AT&T asserts that, as with the College commercial, the shaking of the smartphone conveys that the person in the commercial is totally unable to use his smartphone when outside of AT&T's 3G network. Here again, this makes no sense. If there were no service at all in that particular area, the subscriber would not even be looking at or handling his device. Rather, shaking the device is indicative of the subscriber's frustration with the speed at which the device is downloading data (e.g., loading a webpage). This behavior is analogous

to the desktop computer user I discussed above tapping his or her fingers while waiting for a slow-loading website. In addition, both in voiceover and in text, the message about 3G coverage is clearly stated. “Blue Christmas” conveys one simple message: With Verizon’s extensive 3G coverage, a business traveler will enjoy 3G speed in more geographic locations.

39. I also understand that AT&T asserts that this advertisement is false because an AT&T subscriber likely has 3G coverage in what AT&T characterizes as the allegedly “urban settings” (a motel, a train station, and taxi cab) depicted in the commercial. Motels, train stations, and taxis are not exclusive to urban areas.

“Misfits” Television Commercial

40. The second holiday television commercial, “Misfits” (Exhibit 17), takes place on the “Island of Misfit Toys” -- a place for imperfect toys -- which has its genesis in the long-running “Rudolph the Red-Nosed Reindeer” television special that is replayed on TV every holiday season. As the spot opens, the toys on the island (a spotted pink elephant, a female rag doll, a toy plane, and a “Charlie-in-the-box”) sing their trademark song “We’re on the Island of Misfit Toys.” A smartphone then appears, surprising the toys and prompting the elephant to ask “What are you doing here? You can download apps and browse the web!” The doll chimes in, “Yeah, people will love you!” Immediately after, the Blue AT&T

3G Coverage Map appears above the smartphone, prompting the toys to realize that the device uses AT&T for its 3G service, and to reply collectively “Ohhh....” The toy plane adds “[y]ou’re gonna fit right in here. Ha, ha, ha, ha....” The smartphone along with the Blue AT&T 3G Map bends forward while its screen fades in embarrassment. At that point, the Red Verizon 3G Map and the Blue AT&T 3G Map appear side-by-side, while the announcer says: “With 5 times more 3G coverage than AT&T, Verizon Wireless is your destination for great gifts.”

41. Again, the message is clearly about 3G coverage. This commercial uses humor to make it memorable, and try to break through the “clutter”; the humor does not change the core advertising message, but rather emphasizes it.

42. I understand that AT&T places heavy emphasis on what it describes as the smartphone allegedly “wilt[ing] and its screen turn[ing] dark.” As noted above, however, the smartphone does so out of embarrassment when the other toys learn of the feature that caused the smartphone to be sent to the Island. The scene, moreover, is simply part of the creative execution -- supporting the core message, not changing it.

“Naughty/Nice” Television Commercial

43. Finally, Verizon introduced a third television advertisement in its 3G holiday coverage map campaign, “Naughty/Nice.” (Exhibit 18.) In this spot, a group of elves are working on the assembly line in Santa’s factory, packing smartphones and netbooks into boxes on a conveyor belt. One of the elves calls out the name of the recipient of the gift, while another elf announces whether the recipient is “Nice” or “Naughty.” For the first several recipients, who are “Nice,” the Red Verizon 3G Map appears above red gift boxes, indicating that they will receive smartphones enabled with Verizon 3G coverage. Then, when a recipient is identified as “Naughty,” the Blue AT&T 3G Map appears above a blue gift box. Looking at that blue gift box with the Blue AT&T 3G Map above it, an elf wisecracks “good luck browsing the web with that one.” The announcer at the end of the commercial states: “With 5 times more 3G coverage than AT&T, Verizon Wireless is your destination for great gifts.”

44. AT&T objects to the elf’s statement “good luck browsing the web with that one.” While we do not believe that this line, in context, is false or misleading, the line does not refer to “3G” expressly. To make sure that our 3G message is being communicated properly, in the next several days, that line will be removed, and replaced with “get ready for some spotty 3G coverage.”

45. In sum, all 3 of these new holiday commercials, as well as the 2 prior commercials, convey the core, and truthful, message of Verizon's 3G coverage map campaign: that Verizon has more extensive 3G coverage across the nation than does AT&T.

**THE HARM THAT VERIZON WOULD SUFFER
IF THE COURT WERE TO ENTER A TRO**

46. Since the filing of this lawsuit, there has been extensive news coverage of this lawsuit. Attached as Exhibit 19 are copies of a sampling of print and Internet articles that have appeared since AT&T's lawsuit became public.

47. As Exhibit 19 demonstrates, wireless services, because they are a product that consumers use and depend upon to such a great extent, are a "hot button" issue for online news and commentary. News articles about Verizon and its competitors' 3G products are the subject of frequent posts and discussion on several widely read technology blogs, many of which are covering this lawsuit and are keenly interested in the scope of 3G coverage offered by both parties.

48. Were the Court to prevent Verizon from running the advertisements at issue (actually, our entire campaign), in my opinion, the consuming public -- and many of the newspapers, periodicals, websites, and blogs from which consumers procure information about wireless services -- would form the misimpression that the factual information in Verizon's advertisements was not true, when, in fact, it

is true, thereby reinforcing smartphone consumer confusion about the true scope of AT&T's 3G network.

49. The effect on the public perception of Verizon's 3G network would be severe, resulting in harm to Verizon's business reputation, damage to its brand, and significant loss of revenues.

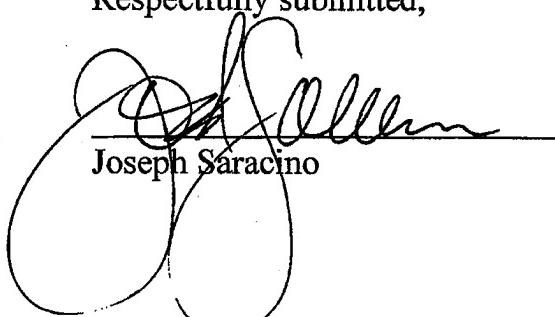
50. Verizon has invested millions of dollars in its current campaign. Advertising is critical to maintaining market share in the intensely competitive wireless services market, as evidenced by the fact that the wireless industry is ranked third in total advertising spending in the U.S. The shutting down of the campaign would have an extremely negative effect on the reach and market penetration of the ads, both of which are driven by recurrent exposure to the campaign.

51. AT&T has filed this lawsuit at the commencement of the holiday season, which is by a large margin the busiest sales season of the year for the wireless industry, and at a time when an injunction would be most disruptive to Verizon's business.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 16, 2009
Basking Ridge, New Jersey

Respectfully submitted,


Joseph Saracino